NO. 1937

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MAY TERM, 1911

MAGGIE ELLEN PARR, et al
Appellants.

vs.

LOUIZA COLFAX,
Appellee.

BRIEF OF APPELLEE

LOUIZA COLFAX

Appealed from the United States Circuit Court for the District of Oregon.

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STATEMENT OF THE CASE.

This is a suit brought in the Circuit Court of the United States for the District of Oregon for the purpose

of determining who are or is the heirs or heir according to the laws of the State of Oregon, of Isaac Gober, deceased, a mixed-blood Indian who was a member of the Walla Walla band of Indians located and residing upon the Umatilla Indian Reservation, and who had alloted to him, as Walla Walla No. 285, the following described land, to-wit: The South 1-2 of S. W. 1-4, of Sec. 23, Twp. 3 N., R. 34, E. W. M., containing 80 acres.

The said allottee died about the 24th day of November, 1899.

The evidence shows conclusively that for about three or more years prior to his death the deceased and Louisa Colfax, the cross-complainant, lived and ing together at the time of his death, upon the Umatilla Indian Reservation, and that such cohabitation and liv ing together was in accordance with the recognized customs of the Indians among whom they lived, before and after allotment, and they had two children, one of whom was born and died prior to the death of Isaac, and the second, which was born and died after his death. He also left surviving him, his sister, Rosa Parr, the complainant in this suit, who claimed to be the only heir, and who died since this suit was commenced, and is succeeded by the appellants, who claim to be the only heirs and as such entitled to the allotment under Act of Congress approved March 3rd, 1885.

The appellee by her cross bill claims to be the only heir, by reason of being the mother and only heir of the posthumous child who died in infancy without lineal descendants.

POINTS AND AUTHORITIES.

I.

Under the allotment act for the Umatilla Indians, which was approved March 3rd, 1885 (23 Stat. L. 340), all lands allotted thereunder are held in trust by the United States for the original allottees or in case of their death for their heirs according to the laws of Oregon.

2.

The laws of Oregon recognize the marriages of Indians, upon the Umatilla Indian Reservation, between Indians, according to the Indian customs, before and after allotments, as valid, and the issue of such marriages is considered legitimate.

Kalyton vs. Kalyton, 45 Or., 116.

3.

Such is the general rule irrespective of allotments.

Johnson vs. Johnson, Adm. 30, Mo. 72 (77 Am. Dec., 798).

Earl vs. Godley, 42 Minn., 361, (44 N. W. 254).

Austin vs. Sharpe, 12 Tex. Cir. App., 223 (33 S. W. 676).

4.

Whether or not such marriage is legal is immaterial in this case since by the Act of Congress, approved 1891, (26 Stat. L., 795) the children of such marriages and cohabitation are declared to be the legitimate heirs of the father.

By that act Congress recognized the validity of Indian marriages.

Kalyton vs. Kalyton, 45 Or., 116, 122.

5.

Indian citizenship does not deprive them of any of the rights and privileges as Indians.

Ells vs. Ross, 12 C. C. A., 205; 29 U. S. App. 59. 64 Fed., 417.

U. S. vs. Longan, 105 Fed., 240.

U. S. vs. Flourney, etc., 69 Fed., 886.

U. S. vs. Millen, 71 Fed., 682.

U. S. vs. Belt, 128 Fed., 168.

U. S. vs. Kiya, 126 Fed., 878; Re Lincoln, 129 Fed., 247.

Mulligan vs. U. S., 56 C. C. A., 50; 120 Fed., 98.

ARGUMENT.

In view of the admitted facts and the authorities cited in this brief, it seems rather useless to present any argument, for there is practically nothing to argue.

The conclusion which the able counsel would have the court draw and fix in its decree, is that the United States by its Congress in enacting the allotment laws, wiped out all distinction between Indians who have become citizens and any other citizen, and that, therefore, there can be no distinction between Indian allottees and other classes of citizens, in the application of the laws of Oregon governing marriages.

This proposition assumes that the laws of the State of Oregon do make a distinction between marriages among Indians who are not allotted and other classes of citizens, and upon that point we are agreed, and we contend that the allotment acts do not change the status of the Indians in that respect at all and they are still entitled to their own peculiar customs in that regard. That is the full meaning and purport of the decision of Supreme Court of the State of Oregon in Kalyton vs. Kalyton, 45 Or., 116, and as pointed out by the same authority on page 122, Congress has expressly sanctioned that interpretation by enacting the amendment to the general allotment law of February 8, 1887, which amendment is quoted

in appellant's brief, and our contention therefore, anticipated.

The amendment is to the general allotment law and not to the special Allotment Act of March 3, 1885, under which the allotments upon the Umatilla Reservation were made, but it is, nevertheless, a legislative declaration and recognition of the law in Oregon and every other state, where it has been determined by the courts that Indian marriages under their own customs were legal.

The general allotment act of February 8, 1887, and the acts amending it declare the general policy of the United States in regard to Indian marriages and the children of such marriages, and notwithstanding the fact that the Umatilla Indians were allotted under a special act, the general act applies to the Umatilla Reservation, for it was passed after the special act.

I do not care to review the several decisions cited by counsel in the brief to show that the general allotment act conferred full citizenship upon Indian allottees, but will simply call the attention of the court to this, that none of them hold that an Indian allottee is deprived of any of his rights or privileges as an Indian, but they are entitled to all their rights as such.

Ells vs. Ross, 12 C. C. A., 205; 29 U. S. App., 59. 64 Fed., 417.

U. S. vs. Logan, 105 Fed., 240.

U. S. vs. Flourney Live Stock etc. Co., 69 Fed., 886.

U. S. vs. Mullen, 71 Fed., 682.

U. S. vs. Belt, 128 Fed.. 168.

U. S. vs. Kiya, 126 Fed., 879.

Re Lincoln, 129 Fed., 247.

Mulligan vs. U. S., 56 C. C. A., 50, 120 Fed.. 98.

We insist that the validity of Indian marriages, and the legitimacy of the issue of such marriages, both before and after the allotments in the State of Oregon, are recognized by the courts of Oregon and also by congress.

Most respectfully submitted,

R. J SLATER,

Solicitor for Appelle.